

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**BARBARA DAHLBERG, individually
and as personal representative of decedent
Ronald Dahlberg,**

Plaintiff,

vs.

Civil No. 1:11-203 RHS/LFG

**MCT TRANSPORTATION, LLC, and
DANIEL J. O'BRIEN,**

Defendants.

ORDER SETTLING COSTS

THE COURT, pursuant to Local Rule 54 of the Rules of Civil Procedure for the United States District Court for the District of New Mexico, effective January 1, 2012, and 28 U.S.C. § 1920, and after reviewing Defendants' Motion to Award Tax and Costs (Doc. 332), filed April 19, 2013, Plaintiff's Response to Defendants' Motion to Award Tax and Costs, filed May 2, 2013 (Doc. 335), and Defendants' Reply in Support of Their Motion to Award and Tax Costs, filed May 17, 2013 (Doc. 337), finds as follows:

1. Fees of the Clerk.

U.S. District Court Filing Fee	\$350.00
Juror Questionnaire Fee	10.00
Total Allowed:	\$360.00

Title 28 U.S.C. § 1920(1) provides that "[f]ees of the clerk" may be taxed as costs. Accordingly, these costs are allowed.

2. Deposition Costs for Trial Witnesses Allowed.

B. Dahlberg	\$303.15
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J. Dubois	387.35
C. Patty	405.00
D. O'Brien	395.25
J. Ward	521.91
K. Johnson	916.62
J.T. Hayes	914.01

Total Allowed: \$3,843.29

The costs associated with these depositions are deemed reasonably necessary to the litigation as all of the deposed persons listed above testified at trial, the depositions were used for either trial and cross-examination preparations, or portions of the depositions were admitted into evidence at trial.

D.N.M.LR-Civ. 54.2(b)(2)(A).

3. Video or Duplicate Depositions Disallowed.

J. Dubois	\$526.97
S. Clouthier	392.00
D. Wagoner	120.00
J. Gillespie	218.65
J. Gillespie	67.50
L. Feazell	480.00
L. Feazell	805.75
W. Guntharp.	924.82

Total Disallowed: \$3,535.69

These depositions do not appear to have been used at trial, nor were these deponents called as witnesses. Further, the costs of both a videotaped deposition and a transcript are disallowed because such costs are duplicative and without reasonable purpose.

4. Attorney Travel Expenses Disallowed.

L. Richards - Lodging	\$140.07
L. Richards - mileage to travel to Raton and Las Vegas	375.87
L. Richards - meals	123.40
L. Richards – travel to D. O'Brien deposition	814.30
L. Richards – lodging for D. O'Brien's deposition	329.77
L. Richards – meals for D. O'Brien's deposition	137.55
L. Richards – car rental for D. O'Brien deposition	169.66
L. Richards – fuel for rental car for D. O'Brien deposition	7.18

L. Richards – parking fee during K. Johnson and J. Ward deposition	30.00
L. Richards – air travel for K. Johnson and J. Ward deposition	791.00
L. Richards – lodging during K. Johnson and J. Ward deposition	271.08
L. Richards – meals during K. Johnson and J. Ward deposition	190.53
L. Richards – car rental fee K. Johnson and J. Ward deposition	265.52
L. Richards – air travel to W. Guntharp deposition	429.00
L. Richards – meals incurred at W. Guntharp deposition	256.87
L. Richards – air travel to second W. Guntharp deposition	300.80
K. Kuehl – travel to L. Feazell deposition	603.60
K. Kuehl – meals at L. Feazell deposition	52.72
K. Kuehl – car rental for L. Feazell deposition	174.42
K. Kuehl – lodging L. Feazell deposition	168.37
K. Kuehl – travel to L. Feazell deposition	20.00

Total Disallowed: \$5,651.71

Defendants have not specified that these costs were for witness expenses. Attorney expenses incidental to client representation are not recoverable as court costs.

5. Transcripts Disallowed.

Transcript of February 19, 2013 hearing on trial exhibits	\$325.82
Transcript of February 25, 2013 hearing on trial exhibits	302.54
Transcript of trial proceedings	7,920.41

Total Disallowed: \$8,548.77

The Defendants have failed to make a showing that the transcript was authorized in advance or requested by the Court. Therefore, this cost is disallowed. D.N.M.LR-Civ 54.2(a).

6. Expert Witness Fees Disallowed.

J.T. Hayes – travel time for accident reconstruction	\$438.75
Dr. G. Rhodes – J. Ward cross-examination prep	1,695.00
W. Guntharp – time to be deposed	789.60
Dr. G. Rhodes – J. Ward cross-examination prep	985.05

Total Disallowed: \$3,908.40

Expert witness fees are not taxable unless ordered by the Court. D.N.M.LR-Civ 54.2(c)(2).

7. Witness Fees Allowed and Disallowed.

C. Patty	40.00
J. Dubois	40.00
Total Allowed:	\$80.00
D. Wagoner	\$40.00
S. Clouthier	40.00
Total Disallowed:	\$80.00

The witness fees associated with Deponents Patty and Dubois are allowed as they testified at trial.

The witness fees associated with Deponents Wagoner and Clouthier are disallowed as they did not testify at trial or a deposition found reasonably necessary to the litigation.

8. Attendance, Travel Expenses, Subsistence Fees Disallowed.

D. O'Brien – airfare to attend trial	\$ 754.10
D. O'Brien – hotel	966.72
D. O'Brien – fee for airplane ticket not used	\$44.30
Total Disallowed:	1,765.12

D. O'Brien was primarily a named Defendant and secondarily a witness. “A party will not receive a witness fee, mileage or allowance for subsistence.” D.N.M.LR-Civ 54.2(1)(D).

9. Law Office Overhead (Lunch) Disallowed.

Lunch for witnesses during trial	\$262.64
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This cost is normally a part of law office overhead and therefore recovered through fees.

Accordingly, this cost is disallowed.

10. Recordings and Copying Costs Disallowed.

Investigative Services – J. Dubois recorded statement	\$ 327.50
Dubland, Inc. – fees for copies	10.68
Total Disallowed:	\$338.18

The copy costs of discovery documents, copies obtained by counsel for counsel's use, or copies provided to clients are disallowed.

11. Copying Costs Allowed.

NMSP Crash Report	\$2.00
Medical Records from Z. Shpall, M.D.	46.98
Medical Records from Cimarron Emergency Services	25.00
Medical Records from Alta Vista Hospital	16.20
Medical Records from UNM Hospital	189.00
Medical Records from Skyline Internal Medicine	188.74
Pulp Faction copies for trial exhibits	1,005.38
Pulp Faction diagram mounting	149.50
Pulp Faction jury instruction mounting fee	54.00
Binders purchased for jury exhibits	19.99

Total Disallowed: \$1,696.79

Copying costs are recoverable under 28 U.S.C. § 1920(4) for copies “necessarily obtained for use in the case.” It is apparent from the description of the copied documents that they were relevant to the issues in the case, necessarily obtained for use in the case, and admitted into evidence at trial in place of an original. D.N.M.LR-Civ 54.2(e). Accordingly, the costs are allowed.

TOTAL COSTS ALLOWED: \$ 5,980.08

TOTAL COSTS DISALLOWED: \$ 24,090.51

ACCORDINGLY, costs are taxed against Plaintiff and in favor of Defendants in the amount of \$5,980.08.

Robert Hayes Scott
Robert H. Scott
United States Magistrate Judge